

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

FONTA WHIPPLE,

CASE NO.: 1:13-cv-710

Petitioner,

Barrett, J.  
Merz, M.J.

v.

WARDEN, Lebanon Correctional  
Institution,

Respondent.

**OPINION AND ORDER**

This matter is before the Court on the Report and Recommendation of the Magistrate Judge. (Doc. 12). In the Report, the Magistrate Judge recommends dismissal of the Petition without prejudice under the doctrine of concurrent sentencing, recognizing, however, that Petitioner could move for relief from judgment if the sentence here should no longer be concurrent. The Report also recommends denying a certificate of appealability.

Petitioner has filed objections to the Report. (Doc. 15). Specifically, Petitioner objects to the finding that the case should be dismissed in order to preserve the issue for appeal given that the Magistrate Judge also recommended dismissing the other case involving Petitioner, 1:14-cv-119, that Petitioner intends to continue litigating. Petitioner further requests a certificate of appealability.

When objections to a magistrate judge's report and recommendation are received on a dispositive matter, the assigned district judge "must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). After review, the district judge "may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." *Id.*; *see also* 28 U.S.C.

§ 636(b)(1). General objections are insufficient to preserve any issues for review: “[a] general objection to the entirety of the Magistrate [Judge]’s report has the same effects as would a failure to object.” *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991).

Upon de novo review, the undersigned finds that the Magistrate Judge did not err in dismissing the case under the doctrine of concurrent sentencing. Accordingly, Petitioner’s Objections (Doc. 15) are OVERRULED and the Report (Doc. 12) is ADOPTED. The Petition is DISMISSED without prejudice under the concurrent sentence doctrine. Because reasonable jurists would not disagree with this conclusion, Petitioner is DENIED a certificate of appealability and the Court certifies to the Sixth Circuit that any appeal would be objectively frivolous.

**IT IS SO ORDERED.**

s/Michael R. Barrett  
Michael R. Barrett, Judge  
United States District Court